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5 CITY AND COUNTY OF SAN
6 FRANCISCO, et al.,
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8 Plaintiffs,
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10 v.
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12 PURDUE PHARMA L.P., et al.,
13 Defendants.
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Case No. 18-cv-07591-CRB

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ORDER DENYING WALGREENS'
MOTION TO STRIKE
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24 Walgreens has moved to strike one of Plaintiff's witness, Carol Lu, from testifying
25 at the abatement phase of the trial. Walgreens' Mot. to Strike (dkt. 1590). Ms. Lu is the
26 Citywide Revenue Manager from the San Francisco Controller's Office and plans to testify
27 about the mechanics and logistics of administering the abatement fund. Id. at 3–4; Opp. at
28 2 (dkt. 1594). According to Plaintiff, Ms. Lu is prepared to explain how the Controller's
Office administers special purpose revenue funds, and how the City tracks these spendings
through audits and reports. Opp. at 2. Plaintiff represents that Ms. Lu will assist the Court
in understanding, among other things, the City's logistics of “overseeing, tracking, and
reporting abatement fund expenditures.” Id.

Walgreens accepts that Ms. Lu's expected testimony is relevant to the upcoming
trial. See Reply at 2–3 (dkt. 1595). But Walgreens seeks to prevent Ms. Lu from
testifying because Plaintiff did not, during discovery, identify Ms. Lu as someone with
relevant and discoverable information. Mot. at 2. Walgreens asserts (and Plaintiff does
not dispute) that Plaintiff did not identify Ms. Lu as a potential witness until October 6

United States District Court
Northern District of California

1 when the parties exchanged their trial witness list. Id. In response, Plaintiff argues that it
2 was not required to disclose Ms. Lu as part of discovery because Ms. Lu has no specific
3 knowledge about opioids or Walgreens such that her testimony would support or contradict
4 Plaintiff's claims or defenses. Opp. at 2–3.

5 The Court agrees with Walgreens that Plaintiff should have identified Ms. Lu
6 earlier as a person “likely to have discoverable information that supports or contradicts a
7 position or claim that [Plaintiff] ha[s] taken or intend[s] to take in this action.” See Mot. at
8 3 (citing Distributor Defendants’ First Set of Interrogatories at 4–5). Ms. Lu plans to
9 testify about how the City administers special purpose funds. This expected testimony
10 appears to be related to whatever position Plaintiff may take at trial on how to effectuate
11 and disburse the abatement fund. The Court, however, disagrees with Walgreens’
12 suggestion that Ms. Lu’s testimony may be expert opinion that involves specialized or
13 technical knowledge, see Mot. at 4–5. Ms. Lu is the Citywide Revenue Manager, and her
14 expected testimony likely is based on her own perceptions, knowledge, and
15 understanding—as a member of the Controller’s Office—of the City’s administrative and
16 financial operations.

17 Based on the parties’ filings, the Court finds that Ms. Lu’s testimony may be helpful
18 and important in crafting an abatement plan, defining the role of a fund administrator (if
19 one is appointed), and structuring any oversight of the plan. Accordingly, the Court
20 **DENIES** Walgreens’ motion to strike. See Yeti by Molly Ltd. v. Deckers Outdoor Corp.,
21 259 F.3d 1101, 1106 (9th Cir. 2001) (noting trial court has “wide latitude” and discretion
22 on imposing discovery sanctions). To cure or mitigate the prejudice from Plaintiff’s late
23 disclosure, Walgreens may promptly depose Ms. Lu. The Court does not expect Ms. Lu to
24 testify until the latter part of trial—i.e., late-November or early-December. There is
25 sufficient time for Walgreens to prepare for its cross-examination of Ms. Lu. See, e.g.,
26 Pineda v. City & Cnty. of San Francisco, 280 F.R.D. 517, 522 (N.D. Cal. 2012) (declining
27 to exclude witness and providing plaintiff an opportunity to cure the deficiency “given the
28 importance of this witness”).

1 **IT IS SO ORDERED.**
2 Dated: October 25, 2022
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CHARLES R. BREYER
United States District Judge